

SENATE BILL No. 69

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Low carbon and noncarbon dioxide emitting plants. Provides that: (1) low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities; and (2) purchases of energy produced by such facilities; qualify for the financial incentives available for clean energy projects. Provides that a combined heat and power facility qualifies as a renewable energy resource for purposes of the statute that provides financial incentives for clean energy projects. Provides that an eligible business may recover qualified utility system expenses, which include specified preconstruction costs, associated with a: (1) new energy production or generating facility; or (2) low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility. Changes the term "clean coal and energy projects" to "clean energy projects" to allow the term to include low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities. Makes other technical changes.

Effective: July 1, 2010.

Boots

January 5, 2010, read first time and referred to Committee on Utilities & Technology.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 69

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.8-1, AS AMENDED BY P.L.175-2007,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 1. (a) The general assembly makes the following
4 findings:

5 (1) Growth of Indiana's population and economic base has created
6 a need for new energy production or generating facilities in
7 Indiana.

8 (2) The development of a robust and diverse portfolio of energy
9 production or generating capacity, including coal gasification and
10 the use of renewable energy resources, is needed if Indiana is to
11 continue to be successful in attracting new businesses and jobs.

12 (3) Indiana has considerable natural resources that are currently
13 underutilized and could support development of new energy
14 production or generating facilities, including coal gasification
15 facilities, at an affordable price.

16 (4) Certain regions of the state, such as southern Indiana, could
17 benefit greatly from new employment opportunities created by



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development of new energy production or generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned or gasified efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy production or generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(7) It is in the public interest for the state to encourage the study, analysis, and construction of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's **and the region's** energy production or generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy production or generating facilities.

(3) The electric transmission and gas transportation systems within Indiana are upgraded to distribute additional amounts of electricity and gas more efficiently.

(4) Jobs are created as new energy production or generating facilities are built in regions throughout Indiana.

(5) The study, analysis, and construction of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

SECTION 2. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. As used in this chapter, "clean ~~coal~~ and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities

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that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(E) Projects or potential projects that employ the use of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating technologies to produce electricity.

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 3. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

SECTION 4. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or

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generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities; or**

(4) purchases fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

SECTION 5. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 7.5. (a) As used in this chapter, "low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility" means an energy production or generation facility that is intended to produce:**

(1) no carbon dioxide as a byproduct of the production or generation of energy; or

(2) less carbon dioxide per megawatt hour of electricity generated than is produced per megawatt hour of electricity generated by a coal fired or other fossil fuel based energy production or generating facility.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.

SECTION 6. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8. (a) As used in this chapter, "new energy production or generating facility" refers to a generation or coal gasification facility that satisfies all of the following:**

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy ~~generation~~ plant; or

(B) newly constructed ~~generation~~ capacity expansion at an existing facility; plant;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean ~~coal and~~ energy project under section 2(2) of this chapter, the facility has an aggregate

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rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy generating or coal gasification facility.

SECTION 7. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8.5. As used in this chapter, "qualified utility system expenses" means any preconstruction costs associated with the study, analysis, or development of a:**

(1) new energy production or generating facility; or

(2) new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility; including siting, design, licensing, and permitting costs, regardless of whether the facility for which such costs are incurred is ultimately constructed or placed in service.

SECTION 8. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9. As used in this chapter, "qualified utility system property" means any:**

(1) new energy ~~production or~~ generating or ~~coal gasification~~ facility; or

(2) new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility;

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 9. IC 8-1-8.8-10, AS AMENDED BY P.L.151-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:**

(1) Energy from wind.

(2) Solar energy.

(3) Photovoltaic cells and panels.

(4) Dedicated crops grown for energy production.

(5) Organic waste biomass, including any of the following organic matter that is available on a renewable basis:

(A) Agricultural crops.

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- 1 (B) Agricultural wastes and residues.
 2 (C) Wood and wood wastes, including the following:
 3 (i) Wood residues.
 4 (ii) Forest thinnings.
 5 (iii) Mill residue wood.
 6 (iv) Waste from clean construction and demolition.
 7 (D) Animal wastes.
 8 (E) Aquatic plants.
 9 (6) Hydropower from existing dams.
 10 (7) Fuel cells.
 11 (8) Energy from waste to energy facilities.
 12 (9) Energy storage systems.
 13 **(10) Combined heat and power facilities.**
 14 (b) Except for energy described in subsection (a)(8), the term does
 15 not include energy from the incinerations, burning, or heating of any of
 16 the following:
 17 (1) Tires.
 18 (2) General household, institutional, commercial, industrial
 19 lunchroom, office, or landscape waste.
 20 (c) The term excludes treated or painted lumber.
 21 SECTION 10. IC 8-1-8.8-11 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) The commission
 23 shall encourage clean ~~coal and~~ energy projects by creating the
 24 following financial incentives for clean ~~coal and~~ energy projects, if the
 25 projects are found to be reasonable and necessary:
 26 (1) The timely recovery of costs incurred during construction and
 27 operation of projects described in section 2(1) or 2(2) of this
 28 chapter.
 29 (2) The authorization of up to three (3) percentage points on the
 30 return on shareholder equity that would otherwise be allowed to
 31 be earned on projects described in subdivision (1).
 32 (3) Financial incentives for the purchase of fuels **or energy**
 33 **produced by a coal gasification facility or by a low carbon**
 34 **dioxide emitting or noncarbon dioxide emitting energy**
 35 **production or generating facility**, including cost recovery and
 36 the incentive available under subdivision (2).
 37 (4) Financial incentives for projects to develop alternative energy
 38 sources, including renewable energy projects **or coal gasification**
 39 **facilities.**
 40 (5) Other financial incentives the commission considers
 41 appropriate.
 42 (b) An eligible business must file an application to the commission

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for approval of a clean ~~coal~~ and energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 11. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing and~~ **production or** generating facilities; **and**

(2) **new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing, permitting,** construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, or expansion of the ~~new energy generating or coal gasification~~ facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, if applicable.

(3) The amount of capital investment by the eligible business in the ~~new energy generating or coal gasification~~ facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover:

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1 (1) the costs associated with qualified utility system property; **and**
 2 (2) **qualified utility system expenses;**
 3 if the eligible business provides substantial documentation that the
 4 expected costs ~~associated with qualified utility system property~~ and
 5 **expenses and** the schedule for incurring those costs **and expenses** are
 6 reasonable and necessary.

7 (e) The commission shall allow an eligible business to recover the
 8 costs associated with the purchase of fuels **or energy** produced by a
 9 coal gasification facility **or by a low carbon dioxide emitting or**
 10 **noncarbon dioxide emitting energy production or generating**
 11 **facility** if the eligible business provides substantial documentation that
 12 the costs associated with the purchase are reasonable and necessary.

13 (f) A retail rate adjustment mechanism proposed by an eligible
 14 business under this section may be based on actual or forecasted data.
 15 If forecast data is used, the retail rate adjustment mechanism must
 16 contain a reconciliation mechanism to correct for any variance between
 17 the forecasted costs and the actual costs.

18 SECTION 12. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007,
 19 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2010]: Sec. 13. An eligible business shall file a monthly report
 21 with the lieutenant governor stating the following information:

22 (1) The amount of Illinois Basin coal, if any, purchased during the
 23 previous month for use in a new energy **production or** generating
 24 ~~or coal gasification~~ facility.

25 (2) The amount of any fuel **or energy** produced by coal
 26 gasification facility and purchased by the eligible business during
 27 the previous month.

28 (3) Any other information the lieutenant governor may reasonably
 29 require.

30 SECTION 13. IC 8-1-8.8-14, AS AMENDED BY P.L.71-2009,
 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2010]: Sec. 14. (a) The group shall conduct an annual study
 33 on the use, availability, and economics of using:

34 (1) renewable energy resources; **and**

35 (2) **low carbon dioxide emitting or noncarbon dioxide emitting**
 36 **energy production or generating technologies to produce**
 37 **electricity;**

38 in Indiana. Each year, the group shall submit a report on the study to
 39 the commission for inclusion in the commission's annual report to the
 40 regulatory flexibility committee described in IC 8-1-2.5-9 and
 41 IC 8-1-2.6-4.

42 (b) The report **required by this section** must include suggestions

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from the group to encourage the development and use of:

- (1) renewable energy resources and technologies, ~~appropriate for use in Indiana. In formulating the suggestions, the group shall evaluate~~ **including** potential renewable energy generation opportunities from biomass and algae production systems; **and**
- (2) **low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating technologies;**

appropriate for use in Indiana.

SECTION 14. IC 8-1-13.1-2, AS ADDED BY P.L.151-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. As used in this chapter, "alternative energy project" means a project that:

- (1) develops or makes use of:
 - (A) clean ~~coal~~ **and** energy projects (as defined in IC 8-1-8.8-2);
 - (B) renewable energy resources (as defined in IC 8-1-8.8-10) for the production of electricity;
 - (C) integrated gasification combined cycle (IGCC) technology to produce synthesis gas that is used:
 - (i) to generate electricity; or
 - (ii) as a substitute for natural gas;
 - regardless of the fuel source used to produce the synthesis gas;
 - (D) methane recovered from landfills for the production of electricity;
 - (E) demand side management, energy efficiency, or conservation programs; or
 - (F) coal bed methane;
- (2) results in quantifiable reductions in, or the avoidance of:
 - (A) the use of electricity produced by traditional electric generating facilities that use fossil fuels as their fuel source; or
 - (B) regulated air pollutants and carbon emissions produced by traditional electric generating facilities that use fossil fuels as their fuel source; and
- (3) is implemented under a plan approved by:
 - (A) the office; and
 - (B) a corporation's or a cooperatively owned power supplier's board of directors.

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